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 Counterclaim-Plaintiff Sequenom, Inc.

**UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ARIA DIAGNOSTICS, INC., )

Plaintiff, )

v. )

SEQUENOM, INC., )

Defendant/  
 Counterclaim-Plaintiff, )

v. )

ARIA DIAGNOSTICS, INC., )

Counterclaim-Defendant, )

and )

ISIS INNOVATION LIMITED, )

Nominal Counterclaim-  
 Defendant. )

Case No. 3:11-cv-06391-SI

**SUPPLEMENTAL DECLARATION  
 OF WILLIAM WELCH IN SUPPORT  
 OF MOTION FOR PRELIMINARY  
 INJUNCTION**

Date: June 22, 2012  
 Time: 9:00 a.m.  
 Place: Courtroom 10, 19<sup>th</sup> Floor  
 Judge: Hon. Susan Illston

1 I, William Welch, declare:

2 1. I am Senior Vice President of Diagnostics at Sequenom, Inc. ("Sequenom"). I  
3 have personal knowledge of the facts stated in this declaration and, if called as a witness, I could  
4 and would testify competently thereto. This supplemental declaration is made in support of  
5 Sequenom's Reply In Support Of Motion for Preliminary Injunction filed concurrently herewith.

6 2. I previously made a declaration in support of Sequenom's motion for preliminary  
7 injunction in this case, which was dated March 8, 2012 ("March 8 Declaration") and filed that  
8 same day with the Court together with Sequenom's motion for preliminary injunction and other  
9 moving papers.

10 3. When my previous declaration was submitted, Ariosa Diagnostics, Inc. (then  
11 known as Aria Diagnostics, Inc.) ("Ariosa") had announced plans to commercially launch its  
12 Harmony Prenatal Test ("Harmony test"). *See* March 8 Declaration ¶¶ 44-47. As far as I am  
13 aware, Ariosa did not at that time announce a specific timetable for the commercial launch of its  
14 Harmony test, but stated that it expected to launch its test sometime in the coming months.

15 4. In late March and early April 2012, through news reports from the media, general  
16 industry "buzz," and reports from my sales managers, I became aware that Ariosa had begun  
17 making its Harmony test commercially available at a few clinical sites. This was described in the  
18 industry media as a "soft launch." Ariosa's launch of its Harmony test at these clinical sites has  
19 resulted in lost sales and slowed adoption of Sequenom's MaterniT21 test.

20 5. [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 6. Northside Hospital issued a press release on March 26, 2012, announcing that it  
27 had partnered with Ariosa to offer the Harmony test to pregnant women under its care. A true  
28 and correct copy of this press release is attached hereto as Exhibit 1. The press release states that

1 “Northside Hospital, an undisputed leader in maternity services, delivers more than 17,000 babies  
 2 a year, more than any other hospital in the United States.” In this press release, Northside  
 3 Hospital and Atlanta Perinatal Consultants announced the availability of “the Harmony Prenatal  
 4 Test, developed and offered by Ariosa Diagnostics.” The press release further states: “Atlanta  
 5 Perinatal Consultants at Northside Hospital is the first to offer this test and it will become more  
 6 broadly available in the near future.”

7 7. [REDACTED]

17 8. [REDACTED]

18 [REDACTED]  
 19 [REDACTED] This  
 20 has slowed the adoption of the MaterniT21 test at this early growth phase of the marketplace,  
 21 when Sequenom is striving to expand its customer base and establish its reputation and leadership  
 22 position in the market for non-invasive prenatal tests for fetal aneuploidies, based on Sequenom’s  
 23 innovative and patent-protected technology.

24 9. Sequenom’s reputation as a technology leader is already being harmed by Ariosa’s  
 25 so far limited launch of its Harmony test. For instance, Northside Hospital, the largest birthing  
 26 center in the United States and a significant leader in maternity services, made statements in its  
 27 March 26, 2012, press release that diminish Sequenom’s reputation by promoting Ariosa’s  
 28

Harmony test as “a novel testing platform to analyze DNA in maternal blood” and a “new test which represents a significant technological advancement.” *See* Exhibit 1.

10. [REDACTED]

[REDACTED] Three weeks ago, on May 7, 2012, Ariosa announced that it had partnered with Laboratory Corporation of America Holdings (“LabCorp”) and that the Harmony test “will be offered through LabCorp and will be available at its 1,000+ patient service centers.” A true and correct copy of Ariosa’s May 7, 2012, press release is attached hereto as Exhibit 2.

11. [REDACTED]

[REDACTED] LabCorp is a well-known heavyweight in the clinical laboratory testing industry. Attached hereto as Exhibit 3 is a true and correct copy of the cover page and selected pages of LabCorp’s 2011 annual report on Form 10-K.

12. According to its 2011 annual report, LabCorp is the “second largest independent clinical laboratory company in the United States based on 2010 net revenues.” Exhibit 3 at 4. LabCorp is a public company with a market capitalization of over \$8 billion. LabCorp had net sales of over \$5 billion from clinical laboratory testing in 2010. *Id.* at 39. LabCorp has “a national network of 51 primary laboratories and over 1,700 patient service centers (“PSCs”) along with a network of branches and STAT laboratories. . . .” *Id.* at 4. LabCorp’s clients include, among others, “physicians, hospitals, managed care organizations, [and] government agencies.” *Id.* LabCorp has a substantial portfolio of tests: “Several hundred of the Company’s tests are frequently used in general patient care by physicians to establish or support a diagnosis, to monitor treatment or to search for an otherwise undiagnosed condition.” *Id.*

13. By offering the Harmony test through LabCorp, Ariosa has a ready-made distribution network and an established client base. LabCorp is already marketing the Harmony test: Integrated Genetics, a LabCorp Specialty Testing Group, has a posting on its web site “Introducing the NEW Harmony™ Prenatal Test” with links to a page describing the test. A true and correct copy of these web site pages are attached hereto as Exhibit 4.

1 14. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] In addition to its national sales force, LabCorp's 2011 annual report states that it has

5 a "national network of over 160 genetic counselors" whose jobs include offering "prenatal genetic

6 counseling expertise to physicians and patients." Exhibit 3 at 7, 9. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] In this email exchange, a true and correct copy of which is

11 attached hereto as Exhibit 5, Dr. Hamner expressed interest in using Sequenom's MaterniT21

12 test, but that interest was derailed by "new developments" as explained in his email dated today,

13 June 5, 2012. As Dr. Hamner's email today makes plain, his group "will not be able to offer

14 Sequenom [sic] testing as an option" as a result of LabCorp/Integrated Genetics' "partnership with

15 Ariosa Diagnostics to offer" the Harmony test.

16 15. If Ariosa and LabCorp are allowed to offer and sell the Harmony test during the

17 remainder of this litigation, Sequenom will not be able to fully recover losses in sales, market

18 share, and reputation, even if Ariosa is subsequently enjoined from offering and selling its

19 infringing test after trial.

20 16. [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] Moreover, when I submitted my previous declaration, the publicly available

25 information was that Ariosa's Harmony test would be priced at \$900. March 8 Declaration ¶ 47.

26 Recently, Ariosa publicly announced that the Harmony test's list price is \$795. This even lower

27 price only increases the pressure on Sequenom to accept lower prices for its MaterniT21 test to

28 remain price-competitive with Ariosa's infringing test.

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Verinata Health publicly announced on May 31, 2012, that its CEO, Caren Mason, is stepping down from her role as leader of Verinata Health. The other competitor of which I am aware, Natera, Inc., has not commercially launched any test for fetal aneuploidies to date.

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